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USMISSION USUN NEW YORK

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INFORM CONSULS

FOLLOWING SENT ACTION SECSTATE DTD 172107Z SEP 76

QUOTE UNCLAS USUN 3788

FROM US DEL LOS

E.O. 11652: N/A

TAGS: PLOS

SUBJECT: AUGUST - SEPTEMBER 1976 - LOS CONFERENCE -

UNCLASSIFIED REPORT

BEGIN SUMMARY:

THE FIFTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE

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ON THE LAW OF THE SEA MET IN NEW YORK FROM AUGUST - SEP-

TEMBER 17, 1976. THE CONFERENCE DECIDED TO EMPHASIZE INFORMAL NEGOTIATION ON OUTSTANDING ISSUES IN THE THREE MAIN COMMITTEES, WITH A MORE DETAILED REVIEW OF THE DISPUTE SETTLEMENT TEXT IN THE INFORMAL PLENARY LEADING TO THE PREPARATION OF A REVISED DISPUTE SETTLEMENT TEXT. THE BASES OF WORK WERE THE REVISED SINGLE NEGOTIATING TEXTS ISSUED AT THE END OF THE SPRING SESSION BY THE CHAIRMAN OF THE MAIN COMMITTEES, AND A SINGLE NEGOTIATING TEXT ON DISPUTE SETTLEMENT ISSUED BY THE PRESIDENT OF THE CONFERENCE. IT WAS DECIDED THAT NO FURTHER REVISIONS OF THE REVISED SINGLE NEGOTIATING TEXTS WOULD BE PROPOSED BY THE CHAIRMEN OF THE COMMITTEES. HOWEVER, THE CHAIRMAN DID ISSUE REPORTS THE LAST DAY OF THE SESSION.

THE THIRD COMMITTEE HAS TRADITIONALLY BEEN ABLE TO HAVE SMALLER GROUPS OF EFFECTIVE SIZE FUNCTION ON A PRAGMATIC BASIS. FOR THE FIRST TIME, THE SECOND COMMITTEE WAS ABLE TO ESTABLISH SIMILAR LIMITED GROUPS OF INTERESTED DELEGATIONS ON SELECTED ISSUES. HOWEVER, THE FIRST COMMITTEE, ITS WORKSHOP, AND EVEN THE WORKSHOP'S NEGOTIATING GROUP, FUNCTIONED IN EFFECT WITH VERY LARGE NUMBERS OF DELEGATIONS PRESENT AT ALL TIMES. WHILE THE DIFFICULTIES FACED IN OTHER COMMITTEES INDICATE THAT SMALLER GROUPS ARE IN AND OF THEMSELVES NO GUARANTEE OF QUICK RESULTS, THE ABSENCE OF A SUITABLE NEGOTIATING VEHICLE IN THE FIRST COMMITTEE CLEARLY CONTRIBUTED TO THE PROBLEM.

THE PRESENT REVISED SINGLE NEGOTIATING TEXT (RSNT) REPRESENTS A CONSENSUS ON A LARGE NUMBER OF ISSUES BEFORE THE CONFERENCE. THIS TEXT HAS BEEN MAINTAINED IN THIS SESSION AS THE BASIS FOR NEGOTIATIONS. A BROAD CONSENSUS ALREADY EXISTS IN CERTAIN KEY AREAS INCLUDING A 12-MILE TERRITORIAL SEA, UNIMPEDED PASSAGE OF STRAITS, ESTABLISHING COASTAL STATE RESOURCE AND OTHER RIGHTS IN A 200-MILE ECONOMIC ZONE, PROTECTING NAVIGATIONAL RIGHTS AND ON MARINE POLLUTION. HOWEVER, IMPORTANT ISSUES ARE OUTSTANDING; ON WHICH THE CONFERENCE CONCENTRATED.

THE FIRST COMMITTEE DEVOTED MOST OF ITS TIME TO
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THE QUESTION OF THE SYSTEM OF EXPLOITATION FOR DEEP SEABED RESOURCES, EVALUATING THE PARALLEL ACCESS SYSTEM PUT FORTH IN THE RSNT. IN AN ATTEMPT TO ACCOMMODATE CONCERNS REGARDING THAT SYSTEM, SECRETARY KISSINGER PROPOSED A PACKAGE APPROACH WHICH WOULD INCLUDE ASSURED ACCESS IN ALL ITS ASPECTS TO DEEP SEABED MINING SITES BY ALL NATIONS AND THEIR CITIZENS ALONG WITH A FINANCING ARRANGEMENT TO ENABLE THE PROPOSED ENTERPRISE (THE INDEPENDENT

OPERATING ARM OF THE INTERNATIONAL SEABED AUTHORITY) TO GET INTO BUSINESS. AS PART OF THAT PACKAGE HE FURTHER PROPOSED THAT THERE COULD BE A REVIEW, IN PERHAPS 25 YEARS, TO DETERMINE IF THE PROVISIONS OF THE TREATY REGARDING THE SYSTEM OF SEABED EXPLOITATION WERE WORKING ADEQUATELY. THIS WAS A SIGNIFICANT MOVE WHICH GENERATED CONSIDERABLE INTEREST WHICH WE BELIEVE CAN BE TRANSFORMED AT THE NEXT SESSION INTO SPECIFIC TREATY LANGUAGE. A NUMBER OF DELEGATIONS, REPRESENTING ALL CONCERNED GROUPS, HAVE EXPRESSED TO US THEIR BELIEF THAT OUR PACKAGE PROPOSAL REPRESENTED A CONSTRUCTIVE CONTRIBUTION TO THE NEGOTIATIONS. THIS REACTION IS ENCOURAGING AND WE INTEND IN THE SAME SPIRIT TO FOLLOW-UP THIS INITIATIVE BOTH DURING THE PERIOD BETWEEN SESSIONS AND AT THE NEXT SESSION. SOME DELEGATIONS CHOSE TACTICS OF CONFRONTATION. THE SECRETARY NOTED THAT SUCH TACTICS CANNOT WORK AND WILL INEVITABLY LEAD TO DEADLOCK AND UNILATERAL ACTION.

THE FIRST COMMITTEE DID NOT HAVE TIME TO DISCUSS THE QUESTIONS OF THE DECISION-MAKING PROCESS OF THE AUTHORITY, INCLUDING THE ASSEMBLY AND THE COUNCIL, OR OTHER MATTERS IN DETAIL.

THE SECOND COMMITTEE SET UP NEGOTIATING GROUPS TO DEAL WITH THE FOLLOWING "PRIORITY QUESTIONS."

- (I) THE LEGAL STATUS OF THE EXCLUSIVE ECONOMIC ZONE. RIGHTS AND DUTIES OF THE COASTAL STATE AND OF OTHER STATES IN THE EXCLUSIVE ECONOMIC ZONE.
 - (II) RIGHTS OF ACCESS AND LAND-LOCKED STATES TO AND FROM THE SEA AND FREEDOM OF TRANSIT.
 - (III) PAYMENTS AND CONTRIBUTIONS IN RESPECT OF THE EXPLOITATION OF THE CONTINENTAL SHELF BEYOND 200 MILES.
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- (IV) DEFINITION OF THE OUTER EDGE OF THE CONTINENTAL MARGIN.

LATER IN THE SESSION, NEGOTIATING GROUPS WERE SET UP ON OTHER MATTERS.

SECRETARY KISSINGER DISCUSSED THE PROBLEM OF THE STATUS OF THE ECONOMIC ZONE WITH OTHER DELEGATIONS, EMPHASIZING THE IMPORTANCE OF FINDING AN ACCOMMODATION THAT PROTECTS THE RIGHTS OF COASTAL STATES WHILE PRESERVING THE HIGH SEAS FREEDOMS OF ALL STATES.

IN THE THIRD COMMITTEE, MOST TIME WAS DEVOTED TO THE PROBLEM OF SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE. WE PROPOSED A COMPROMISE WHICH WILL GIVE

THE COASTAL STATES THE RIGHT TO CONTROL MARINE SCIENTIFIC RESEARCH DIRECTLY RELATED TO RESOURCE EXPLOITATION BUT WHICH WILL ENSURE THE RIGHT TO CONDUCT OTHER FORMS OF MARINE SCIENTIFIC RESEARCH. SECRETARY KISSINGER REVIEWED THE PROBLEM WITH A NUMBER OF OTHER DELEGATIONS. WHILE THE RSNT ON MARINE POLLUTION COMMANDS GENERAL SUPPORT, ATTENTION WAS DEVOTED TO CERTAIN PARTICULAR PROBLEMS SUCH AS STANDARD-SETTING IN THE TERRITORIAL SEA.

THE PLENARY, IN INFORMAL SESSION, ENGAGED IN A DETAILED REVIEW OF THE ARTICLES ON SETTLEMENT OF DISPUTES. ON THIS BASIS, THE PRESIDENT OF THE CONFERENCE PLANS TO ISSUE A REVISED SINGLE NEGOTIATING TEXT ON THE MATTER. THE DEBATE INDICATES THAT THE MAJOR ISSUES REVOLVE AROUND THE CHOICE OF PROCEDURES FOR DISPUTE SETTLEMENT AND THE EXTENT OF DISPUTE SETTLEMENT IN THE ECONOMIC ZONE.

THE CHAIRMEN OF COMMITTEES 2 AND 3 HAVE EACH COMMENTED ON THE INTER-RELATIONSHIPS BETWEEN THE WORK OF THEIR COMMITTEES AND OTHER CONFERENCE WORK, WHICH OF COURSE, CAN BE A COMPLICATING FACTOR.

IN HIS STATEMENT ON THE CONCLUSION OF THE SESSION, SECRETARY KISSINGER COMMENTED ON VARIOUS ISSUES, AND THEN CONCLUDED:

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"WE BELIEVE THAT EQUITABLE RESOLUTION OF THESE AND THE OTHER KEY ISSUES IN THESE NEGOTIATIONS CAN BE FOUND. UNLESS THIS IS THE CASE, VARIOUS GOVERNMENTS MAY CONCLUDE AGREEMENT IS NOT POSSIBLE, RESULTING IN UNILATERAL ACTION WHICH CAN LEAD TO CONFLICT OVER THE USES OF OCEAN SPACE.

"THE UNITED STATES HAS A MAJOR INTEREST AS A GLOBAL POWER IN PREVENTING SUCH CONFLICT AND THUS WILL CONTINUE TO SEEK OVERALL SOLUTIONS ACCEPTABLE TO ALL GROUPS OF COUNTRIES. IN SO DOING, HOWEVER, WE WILL CONTINUE VIGOROUSLY TO SAFEGUARD ESSENTIAL AMERICAN INTERESTS. WE WILL WORK COOPERATIVELY WITH OTHER NATIONS, BUT WE EXPECT A RECIPROCAL ATTITUDE OF GOOD WILL AND REASONABLENESS. THERE ARE LIMITS BEYOND WHICH THE U.S. WILL NOT GO, AND WE ARE CLOSE TO SUCH LIMITS NOW.

"WE MUST MOVE TOWARD BUSINESSLIKE NEGOTIATIONS AND TOWARD A RECOGNITION THAT THE ALTERNATIVE TO A TREATY WOULD SERVE NO NATIONAL OR INTERNATIONAL COMMUNITY INTEREST. I CONTINUE TO BELIEVE THAT A LAW OF THE SEA CONVENTION CAN BE ACHIEVED. THE UNITED STATES WILL SEEK TO BUILD ON THE PROGRESS MADE TO DATE AND WILL CONTINUE ITS INTEN-

SIVE EFFORTS TO ACHIEVE A TREATY. A SUCCESSFUL OUTCOME
WILL BRING MAJOR BENEFITS TO THIS NATION AND HELP SHAPE
A MORE PEACEFUL AND PROSPEROUS INTERNATIONAL COMMUNITY."

THE GENERAL COMMITTEE DECIDED ON THE FOLLOWING
RECOMMENDATIONS TO THE PLENARY REGARDING FUTURE WORK
AND THE NEXT SESSION TO BE HELD IN NEW YORK:

(1) THE CONFERENCE SHOULD HOLD ANOTHER SESSION
IN 1977 FOR SEVEN WEEKS, WITH THE POSSIBILITY OF EXTENDING
IT TO EIGHT WEEKS; (2) THE SESSION SHOULD START ON EITHER
16, 23 OR 30 MAY; (3) THE FIRST TWO OR THREE WEEKS OF THE
SESSION, SHOULD BE DEVOTED TO MATTERS BEING DEALT WITH
BY THE FIRST COMMITTEE TO ENABLE THAT COMMITTEE TO REACH
THE SAME STAGE AS THE OTHER TWO COMMITTEES, BUT OTHER MEETINGS
SHOULD NOT BE PRECLUDED PROVIDED THERE WAS NO INTER-
FERENCE WITH THE FIRST COMMITTEE AND WITH THE PARTICIPATION
OF HEADS OF DELEGATIONS IN THAT COMMITTEE'S WORK; (4)
DURING THE FOLLOWING TWO WEEKS OF THE SESSION, THE SECOND
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AND THIRD COMMITTEES SHOULD MEET ALONG WITH THE FIRST;
(5) DISCUSSIONS SHOULD BE HELD IN PLENARY MEETINGS ON THE
SETTLEMENT OF DISPUTES AS WELL AS FORMAL DISCUSSION ON THE
PREAMBLE AND FINAL CLAUSES OF THE CONVENTION; (6) IN THE
SIXTH WEEK, THE PRESIDENT AND CHAIRMEN OF THE MAIN COMMITTEES
SHOULD PREPARE AN INFORMAL SINGLE COMPOSITE TEXT, ON
THE BASIS OF WHICH THE CONFERENCE SHOULD ATTEMPT TO PREPARE
A DRAFT CONVENTION ON WHICH IT SHOULD ACT IF POSSIBLE BY
CONSENSUS AND WITHOUT RESORT TO VOTING.

AS REGARDS THE INTER-SESSIONAL CONSULTATIONS, THE
COMMITTEE AGREED TO RECOMMEND THAT THE COMMITTEE CHAIRMEN OR
INDIVIDUAL DELEGATIONS SHOULD ORGANIZE SUCH CONSULTATIONS IF
THEY WISHED TO DO SO. THE SECRETARIAT SHOULD INFORM ALL
MEMBERS AND SHOULD TRANSMIT THE RESULTS OF ANY SUCH
CONSULTATIONS TO ALL MEMBERS.

THE CONFERENCE AGREED.

END SUMMARY.

PART I OF TOTAL LOS REPORT

COMMITTEE I

THE UNITED STATES AND A NUMBER OF OTHER COUNTRIES
EXPECTED THAT THE MAJOR ISSUES TO BE DISCUSSED IN COMMITTEE
I DURING THIS SESSION WOULD BE THOSE WHICH HAD NOT BEEN THE
SUBJECT OF PREVIOUS NEGOTIATIONS IN THE COMMITTEE: THE COM-

POSITION AND VOTING MECHANISM OF THE COUNCIL OF THE AUTHORITY; THE STATUTE OF THE ENTERPRISE; AND THE STATUTE OF THE SEABED TRIBUNAL. THE GROUP OF 77, HOWEVER, INSISTED UPON REOPENING BASIC ISSUES. THE FIRST ISSUE WHICH WAS DISCUSSED WAS THE SYSTEM OF EXPLOITATION OF SEABED MINERALS. AS IT TURNED OUT, THIS SUBJECT WAS THE ONLY ITEM ADDRESSED DURING THE SESSION.

THE FORMAL POSITION OF THE GROUP OF 77 WAS THAT THE SYSTEM OF EXPLOITATION PREVIOUSLY NEGOTIATED AND CONTAINED IN THE REVISED SINGLE NEGOTIATING TEXT (RSNT) WAS NOT ACCEPTABLE. THE RSNT PROVISIONS ESTABLISH A PARALLEL SYSTEM OF EXPLOITATION WITH BOTH THE ENTERPRISE OF THE UNCLASSIFIED

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AUTHORITY, AND STATES AND PRIVATE ENTITIES HAVING ACCESS ON EQUAL TERMS TO THE EXPLOITATION OF THE SEABED. THE GROUP OF 77 COUNTER-PROPOSED A SYSTEM WHICH WOULD GIVE THE AUTHORITY BROAD DISCRETIONARY POWERS TO REFUSE TO CONCLUDE CONTRACTS WITH STATES AND THEIR SPONSORED PRIVATE ENTITIES AND THE POWER NOT TO PEEN THE AREA AT ALL. UNDER THIS PROPOSAL, THE FACADE OF A PARALLEL SYSTEM WAS MAINTAINED, BUT THE ENTERPRISE WAS GIVEN CLEAR PREEMINENCE AND STATE AND PRIVATE ACCESS WAS NOT GUARANTEED.

IN RESPONSE TO THIS PROPOSAL, THE UNITED STATES, SUPPORTED BY A NUMBER OF OTHER INDUSTRIALIZED COUNTRIES; AND THE SOVIET UNION, SUPPORTED BY OTHER INDUSTRIALIZED STATES, SUBMITTED DRAFT ARTICLES ON A SYSTEM OF EXPLOITATION. THE UNITED STATES IN MAKING ITS PROPOSAL EMPHASIZED THAT THE PARALLEL OR DUAL ACCESS SYSTEM WAS A METHOD OF ACCOMMODATING THE ESSENTIAL INTERESTS OF ALL STATES AND THE INTERNATIONAL COMMUNITY IN GENERAL.

UNDER THE US SYSTEM, THE AUTHORITY IS GIVEN SUPERVISION OVER ALL ACTIVITIES OF RESOURCE EXPLORATION AND EXPLOITATION IN THE AREA. THE AUTHORITY WOULD ENTER INTO CONTRACTS WITH THE ENTERPRISE ON THE ONE HAND, AND STATES AND PRIVATE PARTIES ON THE OTHER FOR THE EXPLOITATION OF SEABED RESOURCES. THE AUTHORITY WOULD BE REQUIRED TO ENTER INTO SUCH CONTRACTS UNLESS THE APPLICANT FAILED TO MEET A LIST OF SPECIFIC AND EXHAUSTIVE CRITERIA CONTAINED IN THE TREATY OR ITS ANNEX. THE SOVIET UNION'S PROPOSAL CALLED FOR EXPLOITATION OF THE AREA BOTH BY THE AUTHORITY DIRECTLY AND BY STATES AND OTHER ENTITIES UNDER THE EFFECTIVE FISCAL AND ADMINISTRATIVE SUPERVISION OF THE AUTHORITY.

THE DISCUSSIONS IN THE COMMITTEE AND ITS SUBSIDIARY BODIES FOCUSSED ON THESE THREE PROPOSALS, WHICH ESSENTIALLY INVOLVED THE SYSTEM OF EXPLOITATION APPLICABLE

TO STATES AND PRIVATE PARTIES AND DID NOT TOUCH UPON ASPECTS OF ENTERPRISE OPERATIONS WITHIN THE CONTEXT OF A PARALLEL SYSTEM. SINCE THE QUESTION OF THE METHODS OF OPERATION FOR THE ENTERPRISE WAS NOT IN THE FOREFRONT OF THE COMMITTEE'S WORK, ITS CONSIDERATION OF THE PARALLEL UNCLASSIFIED

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SYSTEM OF EXPLOITATION BECAME SOMEWHAT UNBALANCED, WITH UNDUE EMPHASIS BEING PLACED IN ITS DELIBERATIONS ON ONLY THE STATE AND PRIVATE PARTY SIDE OF THE ACCESS SYSTEM ESTABLISHED IN THE RSNT. ACCORDINGLY, MANY OF THE ISSUES CONCERNED WITH THE SYSTEM OF EXPLOITATION WHICH HAD FORMED AN INTEGRAL PART OF THE COMPROMISE CONTAINED IN THE RSNT RE-EMERGED AS ISSUES IN DISPUTE BY THE GROUP OF 77.

TOWARDS THE END OF THE SESSION, HOWEVER, GREATER INTEREST WAS EXPRESSED IN THE POTENTIAL FOR STRENGTHENING THE ABILITY OF THE ENTERPRISE TO FUNCTION WITHIN THE CONTEXT OF A PARALLEL SYSTEM SUCH AS THAT ESTABLISHED IN THE RSNT, A TREND THAT WAS NO DOUBT STIMULATED BY THE COMPROMISE PROPOSALS MADE IN THIS AREA BY SECRETARY KISSINGER DURING HIS SEPTEMBER 1-2 VISIT AT THE CONFERENCE. THE SECRETARY NOTED THAT MANY COUNTRIES HAD EXPRESSED DOUBTS ABOUT THE PARALLEL SYSTEM ON THE GROUNDS THAT IT DID NO GOOD TO SET ASIDE PART OF THE MINE SITES FOR THE AUTHORITY IF IT DID NOT POSSESS THE FINANCIAL RESOURCES OR THE TECHNOLOGY TO EXPLOIT THESE SITES. IN VIEW OF THIS CONCERN, THE SECRETARY SAID THAT THE UNITED STATES GOVERNMENT WOULD BE PREPARED TO AGREE TO A MEANS OF FINANCING THE ENTERPRISE SO THAT IT COULD BEGIN MINING OPERATIONS IN THE SAME TIMEFRAME THAT STATE AND PRIVATE OPERATORS COULD BEGIN EXPLOITATION OF THE SEABED.

THE SECRETARY ALSO NOTED THAT THE CONCERNS OF SOME DELEGATIONS THAT IT WAS PREMATURE TO ESTABLISH A PERMANENT REGIME FOR THE DEEP SEABEDS IN LIGHT OF THE MANY UNKNOWN IN THIS FIELD, AND HE SUGGESTED PERIODIC REVIEW CONFERENCES -- PERHAPS AT TWENTY-FIVE YEAR INTERVALS -- IN WHICH THE SYSTEM COULD BE REEXAMINED, ALTHOUGH EXISTING CONTRACTS WOULD, OF COURSE, BE RESPECTED. THE SECRETARY EMPHASIZED THAT THESE NEW PROPOSALS WERE RESPONSIVE TO THE LEGITIMATE CONCERNS OF THE GROUP OF 77 AND THAT WE NOW REQUIRED SIMILAR RESPONSES TO OUR CONCERNS, PARTICULARLY ON THE ISSUES OF GUARANTEED ACCESS, AVOIDANCE OF PRODUCTION CONTROLS AND A SUITABLE ASSEMBLY AND COUNCIL.

THESE PROPOSALS OF THE SECRETARY WERE NOT DISCUSSED UNCLASSIFIED

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WITHIN COMMITTEE I BECAUSE OF THE LIMITED TIME REMAINING IN THE SESSION, BUT A NUMBER OF DELEGATIONS EXPRESSED INTEREST AND A DESIRE TO PURSUE THE SUBJECTS MENTIONED BY THE SECRETARY IN GREATER DETAIL AT THE NEXT SESSION. FOLLOWING THE SECRETARY'S INITIATIVES, A MARKED CHANGE OCCURRED IN THE NEGOTIATING ATMOSPHERE OF COMMITTEE I IN THAT THE TENDENCY TO CONSIDER STATE AND PRIVATE PARTY ACCESS IN ISOLATION WAS REDUCED, A MORE CONSTRUCTIVE WILLINGNESS TO ADDRESS THE ENTIRE COMPLEX OF ISSUES INVOLVED IN THE SYSTEM OF EXPLOITATION APPEARED.

OUTLOOK

THE OUTLOOK FOR THE NEGOTIATIONS IN COMMITTEE I IS UNCLEAR. IF ONE CHOOSES TO LOOK ONLY AT THE NEGATIVE FACTORS, THE PICTURE IS GLUM INDEED: THIS SESSION PRODUCED NO CONCRETE RESULTS, AND THERE IS LITTLE HARD EVIDENCE THAT THE APPARENT GAP IN POSITIONS ON THE SYSTEM OF EXPLOITATION WAS NARROWED; IN ADDITION TO THE SYSTEM OF EXPLOITATION DISCUSSED AT THIS SESSION, THERE ARE MAJOR ISSUES YET TO BE NEGOTIATED, SUCH AS THE COMPOSITION AND DECISION-MAKING PROCEDURES OF THE COUNCIL. FURTHER, MEMBERS OF THE GROUP OF 77 HAVE IDENTIFIED OTHER ISSUES OF CONCERN, SUCH AS THE POWERS AND VOTING PROCEDURES IN THE ASSEMBLY, ITS RELATIONSHIP TO THE COUNCIL, PRODUCTION CONTROLS, AND THE DISPUTE SETTLEMENT MECHANISM IN COMMITTEE I. THESE ARE COMPLEX ISSUES WHICH WILL TAKE MUCH TIME TO NEGOTIATE UNLESS PROCEDURES CAN BE DEVELOPED WHICH PERMIT NEGOTIATIONS AMONG REPRESENTATIVE GROUPS. MOREOVER, A PARTICULARLY DISTURBING DEVELOPMENT AT THIS SESSION WAS THE INDICATION THAT A FEW DEVELOPING COUNTRIES FOR THE FIRST TIME IN THE NEGOTIATIONS ARE CONSIDERING SUPPORT OF A STATE QUOTA OR ANTI-MONOPOLY PROVISION, A TREND THAT WOULD SERIOUSLY IMPEDE THE CHANCES FOR REACHING AN ACCEPTABLE DEEP SEABED ACCOMMODATION.

ON THE OTHER HAND, THERE ARE POSITIVE FACTORS; IT IS APPARENT THAT MANY OF THE PROBLEMS THIS SESSION WERE CAUSED BY THE INSUFFICIENT TIME AVAILABLE BETWEEN THE TWO NEW YORK MEETINGS IN WHICH TO DIGEST THE WORK OF THE EARLIER CONFERENCE AND TO FORMULATE NEW POSITIONS. IN

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ADDITION, AT THE END OF THIS SESSION THERE APPEARED TO BE WIDESPREAD RECOGNITION THAT THE COMMITTEE COULD NOT AFFORD ANOTHER UNPRODUCTIVE MEETING SUCH AS THIS ONE, AND THAT

AT THE NEXT SESSION DELEGATIONS AND GROUPS MUST COME PREPARED TO MAKE THE HARD POLITICAL COMPROMISES NECESSARY TO REACH AGREEMENT. MOREOVER, WE BELIEVE THAT MOST DELEGATIONS HAVE A BETTER APPRECIATION OF THE MINIMUM REQUIREMENTS OF THE VARIOUS GROUPS AND RECOGNIZE THAT THE SUBSTANCE OF THE RSNT ON MANY OF THE ISSUES INVOLVED IN THE SYSTEM OF EXPLOITATION REPRESENTS THE PROBABLE OUTLINE OF A FINAL COMPROMISE SETTLEMENT WHICH COULD MEET THE ESSENTIAL NEEDS OF ALL GROUPS IN THE ABSENCE OF IDEALOGY AND GROUP POLITICS.

AS IT TURNED OUT, THIS SESSION HAVE AN OPPORTUNITY TO THOSE DELEGATIONS IN THE GROUP OF 77 HOLDING MORE EXTREME POSITIONS TO DOMINATE THE 77 AND ATTEMPT TO OBTAIN FURTHER CONCESSIONS OF SUBSTANCE FROM THE INDUSTRIALIZED COUNTRIES. IT BECAME APPARENT THAT THERE IS NO FURTHER GIVE IN THESE POSITIONS, HOWEVER, AND TOWARD THE END, MODERATING INFLUENCES IN THE UN BEGAN TO EMERGE VOCALLY AND RESUME LEADERSHIP. IF THIS PROCESS CONTINUES, WE MAY FIND SOMEWHAT BETTER CLIMATE FOR NEGOTIATION AT THE NEXT SESSION. NEVERTHELESS, IT MUST BE RECOGNIZED THAT THE ISSUES WHICH DID NOT COME UP AT THIS SESSION ARE AT LEAST AS DIFFICULT AND IMPORTANT AS THE SYSTEM OF EXPLOITATION AND THAT DURING THIS SESSION THE GROUP OF 77 ADOPTED (THOUGH THEY DID NOT TABLE) VERY TOUGH, EXTREMIST POSITIONS ON THEM. THESE POSITIONS UNLESS MODERATED PRIOR TO THE NEXT SESSION COULD CAUSE THE NEXT SESSION TO END IN STALEMATE TOO.

IT SHOULD BE NOTED, AS MENTIONED ABOVE, THAT THERE IS SOME RECOGNITION THAT THE NEGOTIATING DIFFICULTIES IN COMMITTEE I MAY BE PARTIALLY ATTRIBUTABLE TO THE PROCEDURES IT HAS UTILIZED, AS WELL AS TIMING FACTORS. IN THIS CONNECTION, THE FINAL REPORT OF THE CHAIRMAN OF COMMITTEE I, PAUL ENGO, EMPHASIZED THAT NEW PROCEDURAL APPROACHES, SUCH AS VOTING, MAY, IN HIS VIEW, BE NEEDED AT THE NEXT SESSION IN ORDER TO ENCOURAGE DELEGATIONS TO TAKE THE FINAL DECISIONS NECESSARY TO PRODUCE WIDE-

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SPREAD AGREEMENT.

COMMITTEE II

PROCEDURES

ALL NEGOTIATING AT THIS SESSION WAS CONDUCTED IN OPEN-ENDED NEGOTIATING GROUPS ESTABLISHED BY THE CHAIRMAN, AND IN SMALL GROUPS, WHEN IT APPEARED THAT THE NEGOTIATING GROUPS HAD CARRIED ISSUES AS FAR AS

POSSIBLE. THE ESSENTIAL OBJECTIVE WAS TO DEAL INTENSIVELY WITH ISSUES IDENTIFIED BY THE COMMITTEE AS PRIORITY ISSUES. INITIALLY, THE NEGOTIATING GROUPS WERE SET UP TO DEAL WITH FOUR QUOTE PRIORITY UNQUOTE ISSUES, I.E., THE LEGAL STATUS OF THE ECONOMIC ZONE AND THE RIGHTS AND DUTIES OF STATES IN THE ZONE; THE OUTER LIMIT OF CONTINENTAL MARGIN AND REVENUE SHARING; AND ACCESS TO THE SEA BY LANDLOCKED STATES. SUBSEQUENTLY, TWO ADDITIONAL GROUPS WERE ESTABLISHED TO DEAL WITH STRAITS, AND WITH DELIMITATION OF THE TERRITORIAL SEA, EXCLUSIVE ECONOMIC ZONE, AND CONTINENTAL SHELF BETWEEN OPPOSITE AND ADJACENT STATES. SMALL GROUPS, OF THIRTY STATES EACH, FURTHER DISCUSSED THE FIRST THREE ISSUES, AND AN INFORMAL GROUP OF COASTAL STATES AND LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES (LL/GDS) WAS FORMED OUTSIDE THE CONFERENCE STRUCTURE TO DEAL WITH ACCESS TO FISHERY RESOURCES IN THE ZONE BY LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES.

STATUS OF THE ECONOMIC ZONE

WITHOUT A DOUBT, THE MOST IMPORTANT OUTSTANDING ISSUE FOR THE UNITED STATES IN COMMITTEE II WAS, AND REMAINS, THE JURIDICAL STATUS OF THE ECONOMIC ZONE. THE US OBJECTIVE IN THIS REGARD IS TO RETAIN THIS TRADITIONAL HIGH SEAS STATUS OF THE ZONE, EXCEPT FOR RIGHTS OVER RESOURCES AND OTHER LIMITED RIGHTS (WHICH HAD PREVIOUSLY BEEN HIGH SEAS FREEDOMS) ASSIGNED TO COASTAL STATES BY THE PROVISIONS OF THE TREATY. THIS OBJECTIVE HAS BEEN MADE MORE DIFFICULT BECAUSE:
(1) THE PRESENT REVISED SINGLE NEGOTIATING TEXT (RSNT)
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CLEARLY STATES THAT THE ECONOMIC ZONE IS NOT HIGH SEAS, AND (2) IN HIS INTRODUCTORY NOTE TO THE RSNT, THE CHAIRMAN OF THE SECOND COMMITTEE WROTE THE FOLLOWING:

QUOTE NOR IS THERE ANY DOUBT THAT THE EXCLUSIVE ECONOMIC ZONE IS NEITHER THE HIGH SEAS NOR THE TERRITORIAL SEA. IT IS A ZONE SUI GENERIS. UNQUOTE

HE SUGGESTED THAT THE SOLUTION WAS TO BE FOUND IN ADJUSTING THE ARTICLES DEALING WITH THE RIGHTS AND DUTIES OF COASTAL STATES IN THE ZONE, AND THOSE OF OTHER STATES.

THE US MADE CLEAR THAT THE PROVISIONS OF THE RSNT ON THIS SUBJECT ARE UNACCEPTABLE AS WRITTEN AND THAT WE CANNOT AGREE TO ANY TEXT WHICH MAKES IT CLEAR THAT THE ZONE IS NOT HIGH SEAS. ON THE CONTRARY, THE TEXT MUST SOMEHOW EXPLICITLY ACCORD HIGH SEAS STATUS TO

THE ZONE BUT WITH THE RECOGNITION THAT THE ZONE IS NOT HIGH SEAS WITH RESPECT TO THE EXERCISE OF COASTAL STATE RIGHTS PROVIDED FOR IN THE TREATY. IN ADDITION, THE SUMMARY OF COASTAL STATE RIGHTS IN THE ZONE MUST BE MADE CONSISTENT WITH THE SUBSTANTIVE ARTICLES.

THE NEGOTIATIONS HAVE BEEN MADE STILL MORE DIFFICULT BY THE EXTREMISTS OF THE TERRITORIALIST GROUP WHO HAVE INSISTED THAT THE ZONE BE CHARACTERIZED AS ONE OF NATIONAL JURISDICTION IN WHICH OTHER STATES ENJOY ONLY SUBORDINATE RIGHTS OF NAVIGATION, OVERFLIGHT, AND COMMUNICATION.

MORE MODERATE COASTAL STATES WORKED AT THIS SESSION OF THE CONFERENCE TO SEEK AN ACCOMMODATION BY EXPERIMENTING WITH VARIOUS FORMULATIONS WHICH MIGHT MORE SATISFACTORILY SPECIFY THE RIGHTS AND DUTIES OF STATES IN THE ZONE.

DURING TWO VISITS TO THE CONFERENCE, SECRETARY KISSINGER MET WITH VARIOUS KEY DELEGATIONS ON THIS SUBJECT, STRESSING THE IMPORTANCE OF THE ISSUE TO THE UNITED STATES, ELABORATING AGAIN THE US POSITION ON THE ISSUE AS SET FORTH ABOVE, AND ENCOURAGING MODERATE

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DELEGATIONS TOWARD AN ACCEPTABLE ACCOMMODATION.

THE CONTINENTAL MARGIN

TWO QUESTIONS WERE FOCUSED ON DURING THE NEGOTIATIONS. THE FIRST WAS THE DEFINITION OF THE OUTER LIMITS OF THE CONTINENTAL MARGIN WHERE IT EXTENDS BEYOND 200 MILES, AND THE SECOND INVOLVED REVENUE SHARING FROM MINERAL EXPLOITATION ON THE MARGIN BEYOND 200 NAUTICAL MILES.

THE RESOLUTION OF THESE ISSUES IS IMPORTANT IN CLEARING THE WAY TO A SUCCESSFUL CONCLUSION OF A TREATY; ALTHOUGH THE US DOES NOT HAVE AN EXTENSIVE MARGIN BEYOND 200 MILES. SEVERAL OTHER CONFERENCE PARTICIPANTS, WITH VERY BROAD MARGINS, CONSIDER THIS ISSUE OF GREAT IMPORTANCE.

THE TWO GROUPS MOST SERIOUSLY AFFECTED BY THESE ISSUES ARE THE BROAD-MARGIN STATES, WHO FAVOR EXCLUSIVE CONTROL OVER RESOURCES THROUGHOUT THE BROADEST REACHES OF THE MARGIN, AND NARROW MARGIN STATES (INCLUDING LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES) WHO WISH TO ENSURE THAT SIGNIFICANT RESOURCES BE RETAINED

FOR THE COMMON HERITAGE OF MANKIND.

THE US HAS SUPPORTED A COMPROMISE WHICH WOULD DEFINE THE LEGAL LIMIT OF THE CONTINENTAL MARGIN WHERE IT EXTENDS BEYOND 200 MILES, EITHER AT A FIXED DISTANCE FROM THE FOOT OF THE SLOPE, OR AT A FIXED THICKNESS OF SEDIMENT. AS A NECESSARY ADJUNCT TO THIS FORMULA, THE TREATY WOULD PROVIDE FOR A SHARING OF REVENUES DERIVED FROM MINERAL PRODUCTION FROM THE MARGIN BEYOND 200 NAUTICAL MILES WITH THE INTERNATIONAL COMMUNITY. THE FORMULA WHICH WAS THE PRIMARY FOCUS OF ATTENTION CALLED FOR REVENUE SHARING OF ONE PERCENT OF THE VALUE OF PRODUCTION AT THE SITE IN THE SIXTH YEAR OF PRODUCTION, INCREASING IN ANNUAL INCREMENTS OF ONE PERCENT TO A MAXIMUM OF FIVE PERCENT IN THE TENTH YEAR AND THEREAFTER.

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THE CONCEPTS OF THESE FORMULAS SEEM TO BE GAINING SUBSTANTIAL SUPPORT. THE ORGANIZATION(S) WHICH WOULD COLLECT AND DISTRIBUTE REVENUES HAS YET TO BE AGREED. DISCUSSION, HOWEVER, DID FOCUS ON BOTH THE REGIONAL AND OTHER DEVELOPMENT ORGANIZATIONS AND THE INTERNATIONAL SEABED RESOURCE AUTHORITY (ISRA) AS MEDIUMS OF DISTRIBUTION. IT IS AN IMPORTANT ELEMENT IN THE ACCOMMODATION THAT ALL AREAS OF THE MARGIN BEYOND 200 MILES WHICH WOULD BE RECOGNIZED AS UNDER COASTAL STATE JURISDICTION FOR RESOURCE PURPOSES BE SUBJECT TO REVENUE SHARING OBLIGATIONS. IF CERTAIN LARGE AREAS OF THE MARGIN UNDER COASTAL STATE RESOURCE JURISDICTION IS EXCLUDED, THE REVENUES FOR THE INTERNATIONAL COMMUNITY WILL BE SIGNIFICANTLY REDUCED.

LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES (LL/GDS)

A SIGNIFICANT NUMBER OF LL/GDS AT THIS CONFERENCE HAVE PRESSED TO HAVE THEIR INTERESTS ACCOMMODATED. A SUCCESSFUL CONCLUSION OF THE TREATY WILL HAVE TO TAKE THESE INTERESTS INTO ACCOUNT. THEY HAVE BEEN PARTICULARLY ACTIVE IN SEEKING THREE OBJECTIVES: (1) ACCESS TO THE SEA AND TRANSIT RIGHTS; (2) REVENUES FROM THE CONTINENTAL MARGIN BEYOND 200 NAUTICAL MILES, AND (3) ACCESS AND PREFERENTIAL RIGHTS TO LIVING RESOURCES IN THE ECONOMIC ZONES OF NEIGHBORING STATES OR STATES IN THE REGION. WHILE SOME PROGRESS CAN BE SEEN IN THE FIRST TWO CATEGORIES, IT IS THE THIRD WHERE THERE HAS BEEN GREATER CONTROVERSY. AT ISSUE ARE SUCH PROBLEMS AS WHETHER LL AND GDS SHOULD HAVE PREFERENCE TO FISHERIES

OVER THIRD STATES IN THE REGION; WHETHER THAT PREFERENCE SHOULD ONLY BE TO THE SURPLUS; WHETHER LANDLOCKED SHOULD BE TREATED DIFFERENTLY FROM GDS; AND WHETHER A DISTINCTION SHOULD BE MADE BETWEEN DEVELOPING AND DEVELOPED STATES.

THE UNITED STATES RECOGNIZED THIS AS AN IMPORTANT ISSUE, AND HAS ENCOURAGED ATTEMPTS BY THE GROUP OF COASTAL STATES AND THE LL AND GDS GROUP TO FIND AN APPROPRIATE ACCOMMODATION. A SMALL GROUP OF STATES REPRESENTING THE RESPECTIVE INTERESTS HAS COMMENCED NEGOTIATIONS AND HAS UNCLASSIFIED

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BEFORE IT A TEXT FOR CONSIDERATION. THIS IS A VERY ENCOURAGING DEVELOPMENT WHICH WILL HOPEFULLY COME TO FRUITION.

IN CONJUNCTION WITH THE RAISING OF FISHERY RESOURCE ISSUES IN THE ZONE BY LL AND GDS COUNTRIES, THE TUNA ARTICLE RECEIVED SOME RENEWED ATTENTION, BUT THERE WAS NO WIDELY DISPLAYED INTEREST IN AMENDING THE ARTICLE. PRINCIPLES WERE OFFERED FAVORING A MORE COASTALLY-ORIENTED ARTICLE, AND WERE SUPPORTED BY A LIMITED NUMBER OF STATES, SEVERAL OF WHOM MAY NOT HAVE HAD AN INTEREST IN TUNA, BUT DID PREFERE THE STRENGTHENING OF THE ECONOMIC ZONE CONCEPT. THE US MAINTAINS THAT HIGHLY MIGRATORY SPECIES SHOULD BE ACCORDED SPECIAL TREATMENT IN THE ECONOMIC ZONE WITHIN THE FRAMEWORK OF A REGIONAL REGULATING REGIME.

STRAITS USED FOR INTERNATIONAL NAVIGATION

LATE IN THIS SESSION, THE CHAIRMAN OPENED THE QUESTION OF STRAITS FOR DISCUSSION. THE STRAITS ARTICLES PROVIDE THE REGIME OF TRANSIT PASSAGE ESSENTIAL TO ADOPT TO TERRITORIAL SEA GLOBAL LIMIT OF TWELVE NAUTICAL MILES.

THE DISCUSSIONS HAVE CLEARLY INDICATED THAT ONLY A SMALL NUMBER OF STATES HAVE DIFFICULTY WITH THE ARTICLES. A FEW, BUT NOT ANY SUBSTANTIAL NUMBER, OF STRAIT STATES ARE SEEKING CHANGES. THESE CHANGES VARY ACCORDING TO EACH STATE'S GEOGRAPHICAL LOCATION AND CONFIGURATION.

BECAUSE THERE IS A LONG HISTORY OF PRIOR NEGOTIATION ON THE STRAITS ARTICLES, SUBSTANTIVE CHANGE IN THE TEXT APPEARS UNLIKELY.

DELIMINATION BETWEEN OPPOSITE AND ADJACENT STATES

THIS ISSUE WAS ALSO ADDRESSED LATE IN THE SESSION.
THE MAJOR OUTSTANDING QUESTIONS INVOLVE WHETHER THE
PRIMARY METHOD OF DELIMITATION SHOULD BE ACCORDING TO
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EQUITY, OR BY THE APPLICATION OF THE EQUIDISTANCE LINE,
AND AS IT IS GENERALLY AGREED THAT THE SOLUTION IS TO
BE ACHIEVED BY AGREEMENT BETWEEN THE PARTIES, HOW THE
MATTER SHOULD BE TREATED DURING THE INTERVAL PENDING
AGREEMENT.

THE PRESENT TEXT PROVIDES FOR AGREEMENT ACCORDING
TO EQUITABLE PRINCIPLES TAKING INTO ACCOUNT, WHERE
APPROPRIATE, THE MEDIAN OR EQUIDISTANCE LINE. SINCE
THE UNDERLYING PROBLEMS ARE ESSENTIALLY BILATERAL,
THE DEBATES HAVE BEEN CONFUSED AND INVOLVED NO
AGREEMENT WAS REACHED ON WHETHER OR HOW THE TEXT
MIGHT BE AMENDED.

OTHER ISSUES

THE CHAIR PROVIDED LIMITED TIME AT THE END OF
THIS SESSION FOR COUNTRIES TO RAISE ISSUES OF
IMPORTANCE TO THEM OTHER THAN THOSE ISSUES ALREADY
DISCUSSED IN SPECIFIC INFORMAL NEGOTIATING GROUPS.
THE QUESTIONS DRAWING THE MOST COMMENT WERE: 1) THE
RIGHT OF THE COASTAL STATE TO ESTABLISH DESIGN,
CONSTRUCTION, MANNING AND EQUIPMENT STANDARDS FOR
SHIPS IN THE TERRITORIAL SEAS; (2) ARCHIPELAGOES;
(3) THE BREADTH OF THE TERRITORIAL SEAS; (4) ENCLOSED
AND SEMI-ENCLOSED SEAS; (5) BASELINES; AND (6) MID-
OCEAN ARCHIPELAGOES WHO ARE NOT STATES. NONE OF
THESE DISCUSSIONS DREW SUFFICIENT ATTENTION TO WARRANT
FORMAL ACTION BY THE COMMITTEE, ALTHOUGH THE CHAIRMAN
ENCOURAGED FURTHER NEGOTIATIONS AMONG INTERESTED
STATES, AND NOTED THE NEED FOR APPROPRIATE COORDINA-
TION BETWEEN THE SECOND AND THIRD COMMITTEES ON THE
FIRST ISSUE. QUESTIONS CONCERNING STANDARDS FOR MANAGE-
MENT OF LIVING RESOURCES RECEIVED SCANT ATTENTION; AND
MARINE MAMMALS WERE NOT DISCUSSED. THE TRANSITIONAL
PROVISION ALSO WAS TOUCHED UPON.

COMMITTEE III

IM MARINE SCIENTIFIC RESEARCH

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A. U.S. OBJECTIVES: THE RSNT REQUIRES CONSENT OF THE COASTAL STATE FOR ALL SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE, BUT PROVIDES THAT THE COASTAL STATE MAY WITHHOLD IT CONSENT ONLY FOR CERTAIN SPECIFIED SCIENTIFIC RESEARCH ACTIVITIES. THE U.S. POSITION IS THAT THERE SHOULD NOT BE AN OVERALL CONSENT REQUIREMENT, BUT CONSENT SHOULD BE REQUIRED ONLY FOR SPECIFIED MARINE SCIENTIFIC RESEARCH ACTIVITIES -- OTHER SCIENTIFIC RESEARCH ACTIVITIES SHOULD BE CONDUCTED UPON COMPLIANCE WITH SPECIFIED CRITERIA DESIGNED TO PROTECT COASTAL STATE INTERESTS. THESE CRITERIA INCLUDE ADVANCE NOTIFICATION TO THE COASTAL STATE, THEIR PARTICIPATION IN THE RESEARCH PROJECT, AND SHARING OF DATA AND SAMPLES. IN ADDITION, THE U.S. HAS ALSO SOUGHT TO ENSURE THAT PRACTICAL PROTECTIONS FOR RESEARCHING AND COASTAL STATES ARE IMPROVED. THESE PROTECTIONS INCLUDE AN EFFECTIVE TACIT CONSENT PROCEDURE AND PUBLICATION OF BINDING DISPUTE SETTLEMENT PROCEDURES TO ALL DISPUTES CONCERNING SCIENTIFIC RESEARCH.

B. NEGOTIATIONS AT THIS SESSION: MOST DEVELOPING COASTAL COUNTRIES SUPPORTED A CONSENT REGIME OF SOME TYPE FOR SCIENTIFIC RESEARCH. ONLY ONE OR TWO COUNTRIES CONTINUED TO ARGUE FOR A TOTAL, UNQUALIFIED DISCRETIONARY CONSENT REGIME. MOST URGED, AS A COMPROMISE, AN OVERALL CONSENT REQUIREMENT WITH A SPECIFIC LIST OF CRITERIA FOR DENYING CONSENT. IN PARTICULAR, THERE WAS A GENERAL WILLINGNESS TO REMOVE FROM THE CRITERIA RESEARCH PROJECTS WHICH INTERFERE WITH ECONOMIC ACTIVITIES, PROVIDED THAT A CLEAR TREATY OBLIGATION ON RESEARCHING STATES NOT TO INTERFERE WAS INCLUDED.

ON THE QUESTION OF TACIT CONSENT, THERE WAS ONLY A FEW RESERVATIONS WITH MOST DELEGATIONS INDICATING THAT THIS WAS NOT AN ISSUE OF PRINCIPLE.

THERE WAS NO DETAILED DISCUSSION OF DISPUTE SETTLEMENT IN THE THIRD COMMITTEE ALTHOUGH THE QUESTION OF THE APPLICATION OF DISPUTE SETTLEMENT TO SCIENTIFIC RESEARCH WAS DISCUSSED IN THE INFORMAL PLENARY DISCUSSIONS ON PART IV.

SECY. KISSINGER MET WITH A NUMBER OF DELEGATES TO
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DISCUSS SCIENTIFIC RESEARCH IN AN EFFORT TO FIND AN ACCEPTABLE COMPROMISE. HE UNDERScoreD THE IMPORTANCE OF THE ISSUE TO THE UNITED STATES AND THE STRONG OPPOSITION TO RATIFICATION OF THE TREATY BY THE AMERICAN SCIENTIFIC COMMUNITY WHICH COULD RESULT IF THE PRESENT TEXT IS NOT

CHANGED.

THROUGHOUT THIS SESSION, THE CHAIRMAN OF COMMITTEE III (YANKOV-BULGARIA) SEEMED INTENT ON PUSHING THE RSNT AND AN INFORMAL PROPOSAL HE PREPARED AS THE BASIS FOR COMPROMISE. THE REPORT PREPARED BY THE COMMITTEE CHAIRMAN REFLECTS ONLY HIS OWN INFORMAL TEXT, DISREGARDING A VARIETY OF PROPOSALS THAT HAD BEEN PUT FORWARD. THIS IS UNFORTUNATE SINCE INFORMAL NEGOTIATIONS HAD MADE IT CLEAR THAT HIS INFORMAL PROPOSAL COULD NOT SERVE AS A BASIS FOR AN ACCEPTABLE COMPROMISE.

AT THE END OF THE SESSION, AUSTRALIA INFORMALLY PROPOSED A NEW COMPROMISE WHICH REQUIRED CONSENT FOR ALL SCIENTIFIC RESEARCH, BUT LIMITED THE CRITERIA FOR DENYING CONSENT. THIS PROPOSAL WAS CIRCULATED TO ALL DELEGATIONS, RECEIVED SOME FAVORABLE COMMENTS, AND THE CHAIRMAN ENCOURAGED THE AUSTRALIANS TO CONTINUE THEIR EFFORTS.

IN ADDITION TO SUBSTANTIVE PROBLEMS DIRECTLY RELATED TO SCIENTIFIC RESEARCH, THE NEGOTIATIONS HAVE BEEN MADE MORE DIFFICULT BY THE PERCEIVED LINKAGE OF THIS ISSUE WITH THE QUESTION OF THE NATURE OF THE ECONOMIC ZONE. THE ISSUES ARE LINKED IN THE CONFERENCE AND THE NEGOTIATION OF FINAL SOLUTIONS TO BOTH MUST BE COORDINATED.

OVERALL, THE CONFERENCE IS NOT MUCH CLOSER TO AGREEMENT ON MARINE SCIENTIFIC RESEARCH THAN WE WERE AT THE BEGINNING OF THE SESSION. THE U.S. PROPOSAL OF LIMITING CONSENT TO CERTAIN SPECIFIED TYPES OF SCIENTIFIC RESEARCH MET WITH OPPOSITION. HOWEVER, THE POSITION OF A NUMBER OF DEVELOPING COASTAL COUNTRIES TO REQUIRE DISCRETIONARY CONSENT IN VIRTUALLY ALL CASES ALSO MET SIGNIFICANT OPPOSITION.

II. MARINE POLLUTION

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A. U.S. OBJECTIVES: THE PRINCIPLE OBJECTIVE WAS TO STRIKE A BALANCE BETWEEN PROTECTION OF THE MARINE ENVIRONMENT AND FACILITATION OF NAVIGATION AND TRADE. IN PRINCIPLE, PART III OF THE RSNT DOES SO. THE SPECIFIC OBJECTIVES OF THE U.S. WERE: (A) TO ENSURE THAT THE COASTAL STATE HAS AUTHORITY TO ESTABLISH AND ENFORCE STANDARDS FOR ALL VESSELS NAVIGATING IN INNOCENT PASSAGE IN ITS TERRITORIAL SEA, (B) TO STRENGTHEN THE NEW PORT STATE ENFORCEMENT REGIME, (C) TO PRESERVE THE CAREFUL BALANCE BETWEEN COASTAL STATE AND NAVIGATIONAL RIGHTS IN THE ECONOMIC ZONE, AND (D) TO EXTEND THE FLAG STATE OBLIGATION TO INCLUDE DEEP SEA MINING VESSELS. ADDITIONALLY, WE HAD PREPARED

A NUMBER OF CLARIFYING AMENDMENTS TO THE
VESSEL POLLUTION AND OTHER ARTICLES.

B. NEGOTIATIONS AT THIS SESSION: AT THE OUTSET OF
THE SESSION, CHAIRMAN YANKOV (BULGARIA) IDENTIFIED THE
ISSUE OF STANDARD SETTING IN THE TERRITORIAL SEA AS THE
MAJOR OUTSTANDING ISSUE. THE U.S. AND SEVERAL OTHER
STATES PROPOSED DELETING RESTRICTIONS NOT TO HAMPER
INNOCENT PASSAGE. ALL OF THE MARITIME STATES AND A NUMBER
OF DEVELOPING COUNTRIES WITH MARITIME ASPIRATIONS, OPPOSED
THIS POSITION. CHAIRMAN YANKOV INDICATED THAT THE ISSUE
WAS NOT RESOLVED AND THAT FURTHER DISCUSSIONS WERE NEEDED.

INFORMAL COMMITTEE AND SMALL GROUP NEGOTIATING
SESSIONS WERE HELD CONTINUOUSLY DURING THE SESSION TO
DISCUSS OTHER ASPECTS OF VESSEL SOURCE POLLUTION. LARGE
NUMBERS OF AMENDMENTS WERE SUGGESTED, MOST OF WHICH
WOULD UPSET THE DELICATE BALANCE BETWEEN COASTAL AND
PORT STATE POWERS TO PROTECT THE ENVIRONMENT AND THE
RIGHTS OF NAVIGATION. WITH FEW EXCEPTIONS, THE AMENDMENTS
RECEIVED LITTLE SUPPORT AND THE EXISTING TEXT WAS
CONFIRMED.

A NEW PARAGRAPH RELATING TO COASTAL STATE RIGHTS TO
ESTABLISH STANDARDS IN SPECIAL AREAS OF THE ECONOMIC
ZONE WAS NEGOTIATED AND GENERALLY AGREED. THE TEXT
CLARIFIES THE PROCEDURE FOR ESTABLISHING SUCH STANDARDS
AND ASSIGNS A MAJOR ROLE TO THE COMPONENT INTERNATIONAL
ORGANIZATION (IMCO). TIME AND THE ADOPTED PROCEDURE
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DID NOT PERMIT THE DISCUSSION OF THE OTHER ISSUES RELATED
TO THE U.S. OBJECTIVES. THESE REMAIN TO BE DISCUSSED AT
THE NEXT SESSION.

III. TRANSFER OF TECHNOLOGY

THE DISCUSSIONS ON THIS ISSUE WERE VERY BRIEF,
AND IT IS CLEAR THAT THE EXISTING TEXT DOES NOT PROVIDE
AN ANSWER. A FEW DEVELOPING COUNTRIES CONTINUE TO SEEK
TO REQUIRE THE TRANSFER OF ALL DEEP SEABED MINING TECH-
NOLOGY, WHETHER PATENTED OR NOT. MOST SEEM INTERESTED
ONLY IN TECHNOLOGY OWNED BY THE SEABED AUTHORITY AND IN
GAINING RIGHTS TO THAT TECHNOLOGY. HOWEVER, THE ISSUE
IS CLEARLY SO INTERTWINED WITH COMMITTEE I NEGOTIATIONS
THAT NO PROGRESS WAS MADE ON THIS ISSUE IN COMMITTEE III.

DISPUTE SETTLEMENT

A. GENERAL

THE PLENARY OF THE CONFERENCE MET INFORMALLY THROUGH-
OUT THE FIFTH SESSION UNDER THE CHAIRMANSHIP OF
PRES. AMERASINGHE AND, IN HIS ABSENCE FROM AUGUST 5-23,
ACTING PRESIDENT JENS EVENSEN OF NORWAY. THE INFORMAL
PLENARY COMPLETED AN ARTICLE-BY-ARTICLE REVIEW OF THE
SINGLE NEGOTIATING TEXT, PART IV (A/CONF. 62/WP.9/REV.1),
WITH A VIEW TO THE PREPARATION BY THE PRESIDENT OF
A REVISED SINGLE NEGOTIATING TEXT CONCERNING SETTLEMENT
OF DISPUTES. THE PRESIDENT WILL ISSUE A REVISED SINGLE
NEGOTIATING TEXT ON PART IV SHORTLY AFTER THE CLOSE
OF THE SESSION.

A BROAD CROSS-SECTION OF THE MEMBERSHIP OF THE
CONFERENCE PARTICIPATED ACTIVELY IN THE DEBATES.
IT WAS GENERALLY ACCEPTED BY THOSE WHO SPOKE THAT A NEW
LAW OF THE SEA CONVENTION SHOULD INCLUDE A COMPREHENSIVE
SYSTEM FOR THE OBLIGATORY SETTLEMENT OF DISPUTES
RELATING TO THE INTERPRETATION OR APPLICATION OF THE
CONVENTION, AND THAT THE PROCEDURES EMPLOYED SHOULD
LEAD TO FINAL AND BINDING DECISIONS. THE US STRONGLY
SUPPORTED THIS PRINCIPLE. FOR SOME DELEGATIONS, HOWEVER,
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ACCEPTANCE OF SUCH A SYSTEM WAS MADE CONTINGENT ON THE
SATISFACTION OF THEIR OBJECTIVES WITH RESPECT TO
CERTAIN ASPECTS OF THE SYSTEM. SPECIFICALLY, SOME
COASTAL STATES CONSIDERED A SATISFACTORY EXCLUSION OF
DISPUTES RELATING TO THE EXERCISE OF CERTAIN COASTAL STATE'S
RIGHTS IN THE ECONOMIC ZONE (ART. 18 OF THE SNT) TO BE
CRUCIAL TO THE ACCEPTANCE OF OBLIGATORY DISPUTE
SETTLEMENT. OTHER STATES CONSIDERED THE AVAILABILITY
OF SPECIFIC PROCEDURES FAVORED BY THEIR GOVERNMENTS,
PARTICULARLY THE LAW OF THE SEA TRIBUNAL OR THE SYSTEM
OF SPECIAL PROCEDURES, TO BE SIMILARLY ESSENTIAL.

CHOICE OF PROCEDURE

ART. 9 OF THE SNT SET FORTH A PROCEDURE BY WHICH
EACH CONTRACTING PARTY COULD CHOOSE TO ACCEPT THE JURIS-
DICTION OF ONE OF FOUR DISPUTE SETTLEMENT PROCEDURES
--THE INTERNATIONAL COURT OF JUSTICE, ARBITRATION, THE
LAW OF THE SEA TRIBUNAL, OR THE SYSTEM OF SPECIAL PROCE-
DURES CONTAINED IN ANNEX II. THE PRINCIPLE OF THIS
ARTICLE WAS WIDELY ACCEPTED AS THE ESSENTIAL CORE OF
A DISPUTE SETTLEMENT CHAPTER THAT COULD BE SUPPORTED BY
A CONSENSUS OF THE CONFERENCE. MANY DELEGATIONS DID NOT
FAVOR ONE OR ANOTHER OF THE FOUR ALTERNATIVE PROCEDURES.
SOME DELEGATIONS DID NOT WISH TO INCLUDE AS AN ALTER-
NATIVE THE SYSTEM OF SPECIAL PROCEDURES AND A FEW OTHERS

DID NOT WISH TO INCLUDE THE LAW OF THE SEA TRIBUNAL AS AN ALTERNATIVE. THE UNITED STATES INDICATED THAT IT HAD NOT DECIDED WHICH OF THE PROCEDURES IT WOULD CHOOSE, AND THEREFORE WOULD SEEK TO MAKE EACH AS EFFECTIVE AS POSSIBLE.

ART. 9 PARAGRAPH 7 OF THE SNT DEALS WITH THE APPROPRIATE PROCEDURE IN A CASE WHERE THE PARTIES TO THE DISPUTE HAD CHOSEN DIFFERENT PROCEDURES, IN WHICH CASE THE PLAINTIFF WOULD BE REQUIRED TO GO TO THE PROCEDURE CHOSEN BY THE DEFENDANT. A NUMBER OF DELEGATIONS, ESPECIALLY THOSE THAT DID NOT FAVOR PRE-CONSTITUTED TRIBUNALS, SUGGESTED THAT ARBITRATION SHOULD BE THE PROPER PROCEDURE IN SUCH A CASE. A FEW FAVORED THE PROCEDURE CHOSEN BY THE PLAINTIFF. THE UNITED STATES SUGGESTED

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GIVING THE PLAINTIFF A CHOICE BETWEEN THE PROCEDURE CHOSEN BY THE DEFENDANT AND ARBITRATION.

C. EXCEPTIONS

ART. 18, PARAGRAPH 1 OF THE SNT EXCLUDED CERTAIN DISPUTES RELATING TO THE EXERCISE OF SOVEREIGN RIGHTS, EXCLUSIVE RIGHTS OR EXCLUSIVE JURISDICTION BY A COASTAL STATE FROM THE OBLIGATION TO SETTLE DISPUTES IN ACCORDANCE WITH THE PROCEDURES IN THE CONVENTION. A NUMBER OF EXCEPTIONS ARE THEN MADE TO THIS EXCLUSION FOR DISPUTES RELATING TO INTERFERENCES WITH NAVIGATION, OVERFLIGHT, SUBMARINE CABLES AND PIPELINES, SUBSTANTIVE RIGHTS SPECIFICALLY ESTABLISHED BY THE CONVENTION AND TO CERTAIN ENVIRONMENTAL MATTERS. THE EFFECT OF THIS APPROACH IS THAT THE EXCEPTIONS TO THE EXCLUSION DESCRIBE THE MATTERS THAT WOULD BE SUBJECT TO OBLIGATORY DISPUTE SETTLEMENT.

GENERALLY SPEAKING, THE COASTAL STATES SOUGHT TO RESTRICT THE EXCEPTIONS TO THE EXCLUSION, FOCUSING IN PARTICULAR ON A DESIRE TO DELETE THE EXCEPTIONS CLAUSE DEALING WITH RIGHTS SPECIFICALLY ESTABLISHED BY THE CONVENTION. THESE STATES STRONGLY OPPOSED DISPUTE SETTLEMENT FOR FISHERIES. THE UNITED STATES AND SEVERAL MARITIME AND DISTANT-WATER FISHING STATES SOUGHT TO BROADEN THE EXCEPTIONS, ESPECIALLY WITH RESPECT TO FISHERIES. THERE WAS INSUFFICIENT DISCUSSION OF A POSSIBLE COMPROMISE WHEREBY OBLIGATORY DISPUTE SETTLEMENT WOULD APPLY TO FISHERIES DISPUTES WITH PROTECTION FOR THE COASTAL STATE FROM HARASSING ACTIONS ARISING FROM THE EXERCISE OF ITS DISCRETION IN ACCORDANCE WITH THE CONVENTION.

A NUMBER OF STATES INSISTED THAT DISPUTES RELATING TO MARITIME BOUNDARIES, DEALT WITH IN ART. 18, PARAGRAPH 2 (A) OF THE SNT, BE EXCLUDED FROM THE JURISDICTION OF ANY DISPUTE SETTLEMENT PROCEDURE AT THE OPTION OF A CONTRACTING PARTY. SEVERAL DID NOT BELIEVE THAT AN OPTIONAL EXCLUSION SHOULD BE AVAILABLE FOR DISPUTES CONCERNING MILITARY ACTIVITIES, AS PROVIDED BY ART. 18, PARAGRAPH 2 (B) OF THE SNT.

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D. ACCESS TO DISPUTE SETTLEMENT PROCEDURES

MOST DELEGATIONS GENERALLY ACCEPTED THAT THE DISPUTE SETTLEMENT PROCEDURES SHOULD BE AVAILABLE TO ALL CONTRACTING PARTIES AND, WITH RESPECT TO DISPUTES UNDER CONTRACTS WITH THE INTERNATIONAL SEABED AUTHORITY, TO THE AUTHORITY AND ITS CONTRACTORS. MANY DELEGATIONS OPPOSED ACCESS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS OR PRIVATE PERSONS, NATURAL OR JURIDICAL. THE US AND SEVERAL EUROPEAN STATES SUPPORTED ACCESS FOR OWNERS AND MASTERS OF VESSELS TO REQUEST RELEASE ON BOND OF DETAILED VESSELS AS PROVIDED BY ARTICLE 15. NOTING THAT THIS WOULD NOT ENTAIL A DECISION ON THE MERITS OF A DETENTION, BUT ONLY A PROCEDURE TO FACILITATE PROMPT RELEASE OF THE VESSEL ON BOND. WITH RESPECT TO THE LAW OF THE SEA TRIBUNAL, A FEW DELEGATIONS SUGGESTED THAT ENTITIES THAT HAD BEEN OBSERVERS AT THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA SHOULD HAVE ACCESS TO THE PROCEDURES.

E. THE LAW OF THE SEA TRIBUNAL

SEVERAL DELEGATIONS OPPOSED THE CREATION OF A NEW LAW OF THE SEA TRIBUNAL WHILE MANY SUPPORTED IT. THOSE WHO DID NOT LIKE IT INSISTED THAT THE ENTIRE SYSTEM BE STRUCTURED SO THAT THEY COULD NOT BE FORCED TO GO BEFORE IT, IN WHICH CASE THEY WOULD NOT OBJECT TO ITS CREATION AS AN OPTION FOR THOSE WHO FAVORED IT. THE UNITED STATES INDICATED THAT IT COULD SUPPORT THE CREATION OF A WELL-CONSTITUTED TRIBUNAL.

WITH RESPECT TO THE COMPOSITION OF A NEW TRIBUNAL, PRES. AMERASINGHE ANNOUNCED SNT AMENDMENTS SO THAT ALLOCATION OF SEATS ON THE TRIBUNAL BY REGION WOULD BE DELETED AND THE SELECTION BE MADE BY A CONFERENCE OF CONTRACTING PARTIES ON THE BASIS ASSURING REPRESENTATION OF THE PRINCIPLE LEGAL SYSTEMS OF THE WORLD AND EQUITABLE GEOGRAPHICAL DISTRIBUTION, PROVIDED THAT EACH REGIONAL GROUP WOULD HAVE AT LEAST TWO SEATS.

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F. THE SYSTEM OF SPECIAL PROCEDURES

MOST DELEGATIONS CRITICIZED, AND SEVERAL OPPOSED, THE SYSTEM OF SPECIAL PROCEDURES CONTAINED IN ANNEX II. AMONG THE PRINCIPLE CRITICISMS WERE THE UNWORKABILITY OF THE PROHIBITION ON INTERPRETATION (AS DISTINGUISHED FROM APPLICATION OF THE CONVENTION) BY SPECIAL COMITES, THE LIMITATION OF MEMBERSHIP ON THE COMITES TO SCIENTIFIC AND TECHNICAL EXPERTS, THE ALLEGED DEVELOPED COUNTRY BIAS OF EXPERTS, AND THE DELAY AND DISPUTES THAT WOULD BE OCCASIONED BY THE NEED FOR APPEALS AND THE REFERENCE OF QUESTIONS OF INTERPRETATION TO ANOTHER PROCEDURE. PROPONENTS OF THE SPECIAL PROCEDURES AGREED THAT THE SPECIAL COMITES COULD BE AUTHORIZED BOTH TO INTERPRET AND APPLY THE CONVENTION AND MAY INCLUDE JURIDICAL EXPERTS IN THEIR COMPOSITION, THUS ELIMINATING THE NEED FOR APPEALS OR REFERRALS.

G. RELATION TO PART I PROCEDURES

SEVERAL MEMBERS OF THE GROUP OF 77 TOOK THE VIEW THAT THE SEABEDS TRIBUNAL CONTAINED IN PART I OF THE REVISED SINGLE NEGOTIATING TEXT SHOULD BE MERGED WITH THE LAW OF THE SEA TRIBUNAL CONTAINED IN PART IV OF THE SINGLE NEGOTIATING TEXT. SUCH A MERGER WOULD RESULT IN A SINGLE TRIBUNAL WITH A SPECIAL CHAMBER FOR DISPUTES ARISING UNDER PART I, AND A GENERAL CHAMBER FOR OTHER DISPUTES. FOR THESE DELEGATIONS, LARGE PARTS OF THE DISCUSSION ON PART IV WERE UNDERTAKEN SUBJECT TO THE SUBSEQUENT RESOLUTION OF THIS ISSUE. IT WAS NOT DEBATED AT THIS SESSION OF THE CONFERENCE AND REMAINS AN IMPORTANT ITEM FOR FUTURE CONSIDERATION. SCRANTON UNQUOTE ROBINSON

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